



DEPARTMENT OF TRANSPORTATION

[4910-22-P]

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice provides information regarding the FHWA's finding that a conditional Buy America waiver is appropriate for the obligation of Federal-aid Congestion Mitigation and Air Quality (CMAQ) Improvement program funds for the purchase of three vehicles; Sedan or hatch back (Driver + 4 passenger capacity) two wheeled drive with minimum 27 MPG for the State of Vermont.

DATES: The effective date of the waiver is [insert date one day after publication in Federal Register].

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366-1562, or via e-mail at gerald.yakowenko@dot.gov. For legal questions, please contact Mr. Michael Harkins, FHWA Office of the Chief Counsel, (202) 366-4928, or via e-mail at michael.harkins@dot.gov. Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the Federal Register's home page at: <http://www.archives.gov> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>.

Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding the FHWA's finding that a partial Buy America waiver is appropriate for the obligation of Federal-aid CMAQ program funds for the purchase of three vehicles; Sedan or hatch back (Driver + 4 passenger capacity) two wheeled drive with minimum 27 MPG for the State of Vermont.

In accordance with Division A, section 122 of the "Consolidated and Further Continuing Appropriations Act, 2012" (Pub. L. 112-284), the FHWA published a notice of intent to issue a waiver on its Web site for the three vehicles; Sedan or hatch back (Driver + 4 passenger capacity) two wheeled drive with minimum 27 MPG for the State of Vermont (<http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=67>) on March 5, 2012. The FHWA received 18 comments in response to the publication. Fifteen commenters objected to the proposed waiver but did not provide evidence of a domestic source that meets the appropriate requirements. Three of the commenters expressed partial or full support for the proposed waiver based on the belief that there are no domestic manufacturers that are able to provide a vehicle with 100 percent domestic steel and iron content. Several commenters questioned the need for this specific type of

vehicle; however, Vermont's representative explained that the vehicles are necessary to meet their needs of the CarShare program.

During the 15-day comment period, the FHWA conducted additional review but was unable to locate a domestic manufacturer that could meet a 100 percent domestic steel and iron content requirement. Based on all the information available to the agency, the FHWA concludes that there are no domestic manufacturers that could meet a 100 percent domestic steel and iron content for the Sedan or hatch back (Driver + 4 passenger capacity) two wheeled drive with minimum 27 MPG for the State of Vermont.

The FHWA's Buy America requirement was initially established in 1983 when the acquisition of vehicles was not eligible for assistance under the Federal-aid highway program. As such, the FHWA's Buy America requirements were tailored to the types of products that are typically used in highway construction, which generally meet a 100 percent domestic steel and iron content requirement. Vehicles were not the types of products that were initially envisioned as being purchased with Federal-aid highway funds when Buy America was first enacted. In today's global industry, vehicles are assembled with components that are made all over the world. The FHWA is not aware of any vehicle on the market that can claim to incorporate 100 percent domestic steel and iron content. For instance, the Chevy Volt, which was identified by many commenters in a November 21, 2011, Federal Register Notice as being a car that is made in the United States, comprises only 40 percent United States and Canada content according to the window sticker

(http://www.cheersandgears.com/uploads/1298005091/med_gallery_51_113_449569.png). There is no indication of how much of this 40 percent United States/Canadian content

is United States-made content. Thus, the FHWA does not believe that application of a domestic content standard should be applied to the purchase of vehicles. However, it appears that there is an indication of whether vehicles are assembled in the United States. Specifically, the window sticker for the Chevy Volt says that the vehicle's final assembly point was in the United States.

While the manufacture of steel and iron products that are typically used in highway construction (such as pipe, rebar, struts, and beams) generally refers to the various processes that go into actually making the entire product, the manufacture of vehicles typically refers to where the vehicle is assembled. Thus, given the inherent differences in the type of products that are typically used in highway construction and vehicles, we feel that simply waiving the Buy America requirement, which is based on the domestic content of the product, without any regard to where the vehicle is assembled would diminish the purpose of the Buy America requirement. Moreover, in today's economic environment, the Buy America requirement is especially significant in that it will ensure that Federal Highway Trust Fund (HTF) dollars are used to support and create jobs in the United States.

Several commenters noted that FHWA has historically limited the application of Buy America requirements to products that are permanently incorporated into a Federal-aid highway construction project. These commenters questioned the applicability of the Buy America requirements to vehicle acquisitions and retrofit projects. In response to these commenters, the FHWA is implementing the statutory provisions of 23 U.S.C. 313(a) which preclude FHWA from obligating any funds “. . . unless steel, iron, and manufactured products used in such project are produced in the United States.” The

requirements are applicable to all Federal-aid projects funded under Title 23, United States Code. The basis for most of the opposing comments was that the State should be required to buy an American vehicle, such as the Chevy Volt. Since the FHWA is not aware of any vehicles containing 100 percent domestic content, including the Chevy Volt, the FHWA interprets these comments as advocating for a vehicle that is assembled in the United States. Therefore, the FHWA believes that a conditional waiver that allows Vermont to purchase these vehicles so long as the final assembly of the vehicle as the end product occurs in the United States is appropriate. This approach is similar to the conditional waivers given to Alameda County, San Francisco County, and Merced County, CA, for vehicle purchases on November 21, 2011 (76 FR 72027 and 76 FR 72028) and March 30, 2012 (77 FR 19410).

As a result, State departments of transportation will need to make a good faith effort to determine whether the final assembly of a vehicle or vehicle retrofit occurs in the United States. With respect to passenger motor vehicles, the FHWA notes that the National Highway Traffic Safety Administration has established criteria in 49 CFR Part 583 for vehicles subject to the America Automobile Labeling Act (AALA) ([http://www.nhtsa.gov/Laws+&+Regulations/Part+583+American+Automobile+Labeling+Act+\(AALA\)+Reports](http://www.nhtsa.gov/Laws+&+Regulations/Part+583+American+Automobile+Labeling+Act+(AALA)+Reports)). Vehicles meeting the criteria for final assembly under the AALA is one option for State DOTs to make a good faith effort in determining whether final assembly of vehicles subject to AALA requirements occurs in the United States. The FHWA will publish a notice in the Federal Register at a future date to request public comments on what standards should apply to vehicles. In the meantime, the FHWA does

not wish to further delay these projects while the appropriate standard for vehicles is established.

In conclusion, and in light of the above, pursuant to 23 U.S.C. 313(b)(1), the FHWA finds that it is in the public interest to grant a conditional waiver from the general 100 percent domestic content requirement that applies to Federal-aid highway projects under Buy America. Under this conditional waiver, however, the final assembly of any vehicles purchased with HTF funds must occur in the United States. Thus, so long as the final assembly of the sedans or hatch backs (Driver + 4 passenger capacity) two wheeled drive with minimum 27 MPG occurs in the United States, Vermont may proceed to purchase these vehicles consistent with the Buy America requirement.

In accordance with the provisions of section 117 of the SAFETEA-LU Technical Corrections Act of 2008 (Pub. L. 110-244, 122 Stat. 1572), the FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to the FHWA's Web site via the link provided to the Vermont waiver page noted above.

(Authority: 23 U.S.C. 313; Pub. L. 110-161, 23 CFR 635.410)

Issued on: June 6, 2013

Victor M. Mendez
Administrator
Federal Highway Administration

[FR Doc. 2013-14144 Filed 06/14/2013 at
8:45 am; Publication Date: 06/17/2013]